



OFFICE OF COMPLIANCE SERVICES
UVM.EDU/POLICIES

POLICY

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Employee vs. Independent Contractor

In accordance with federal and state laws and regulations pertaining to the proper classification of individuals as independent contractors or employees, the University of Vermont must properly determine whether an individual providing services should be classified as an employee or as an independent contractor before any purchase requisitions are initiated or services are performed. This policy provides a standard process for making this determination and identifying appropriate supporting documentation.

Reason for the Policy

The University needs to ensure that it operates in compliance with federal and state laws and regulations governing the classification of individuals as employees or independent contractors. The consequences of misclassifying employees as independent contractors may include significant liabilities, including tax liabilities and penalties, criminal sanctions, and civil liability. Note that any taxes, interest, or penalties assessed against the University due to misclassification of an individual as an independent contractor may be charged back to the hiring department budget.

Applicability of the Policy

This policy applies to all members of the University of Vermont community who engage individuals to

Services Agreement: A contract between the University of Vermont and an individual or entity, for services being provided to the University. A Service Agreement is required to pay for services, other than speaker engagements, in an amount of \$1,000 or greater (including fees and expenses).

Speaker Engagement: A letter of agreement between the University of Vermont and an individual for a one-time engagement of a day or two (e.g., guest speaker, workshop leader). If the guest speaker engagement will result in a payment of \$500 or greater (whether for honorarium/speaker fee, or travel expenses), this form is required. Virtual speaking engagements of any amount require a letter of agreement.

(The following definitions are included to inform departments on elements of the IRS W-9 form)

Doing Business As (DBA): A business name for an individual or entity, as registered with their state of operation. Even though an individual is using a DBA business name, they may still

Social Security Number (SSN): Identification number issued by the Social Security Administration to individuals only.

Sole Proprietor: Tax classification where income and losses are reported and taxed on an individual's personal income tax return. Therefore, the individual needs an Employee vs. Independent Contractor determination and will receive an IRS Form 1099 if classified as an Independent Contractor.

Taxpayer Identification Number (TIN): An identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued either by the Social Security Administration (SSA) or by the IRS. A Social Security number (SSN) is issued by the SSA whereas all other TINs are issued by the IRS.

Background – Independent Contractor vs Employee

Under federal and state laws and regulations, the University has a number of obligations relative to its employees, including meeting wage and hour obligations such as minimum wage and overtime pay; withholding applicable federal and state taxes from employee compensation; contributing to unemployment and workers' compensation insurance; and providing certain employee benefits, such as health insurance. The laws that govern these obligations generally presume that if the University is hiring an individual to perform services, the individual is an employee unless the following conditions are satisfied:

- x The individual is free from control and direction by the University in connection with the performance of services. The University should direct only the result of the work, not the means and methods of accomplishing the result.
- x The services are performed outside the usual course of the business of the University. Individuals who perform services that are a necessary component of the operation of the University, such as instruction and research, should be classified as employees.
- x The individual is customarily engaged in an independently established trade, occupation, profession or business.

Procedures

Step 1: Determine whether the service provider is, or has been, a UVM employee.

The University's Employee vs. Independent Contractor Determination Form (EIC Form) helps members of the University community evaluate whether the service provider should be classified as an employee or an independent contractor. Contact the Disbursement Center at 802-656-4192 or email supplier@uvm.edu for confirmation of an approved supplier record in PeopleSoft for this individual.

The EIC form requires the unit to perform a web search for individuals under evaluation to confirm they are not presented as an employee on a University of Vermont web page. Such listings generally preclude the individual from being treated as an independent contractor. Similarly, individual service providers who are determined to be independent contractors under this policy may not use the University's name, logo or

paid employment in the *preceding* calendar year *presumptively precludes the individual from being classified as an Independent Contractor of the University.*

Step 2: Obtain a W-9 Form from the service provider.

If the service provider has not been paid or reimbursed as an Employee in the current or previous calendar year, the respective dean, director or chair (or *authorized* designee thereof) of the department or unit obtaining the individual's or entity's services must obtain a completed Form W-9 from the service provider if new to the University (as confirmed in Step 1). If the W-9 indicates that the individual is providing services either as an individual with a Social Security number or as a sole proprietor with a separate EIN number, completing Step 3 below is required. If the W-9 indicates that the service provider is any other type of taxable entity other than an individual or sole proprietor, no EIC form is needed. the W-9 must be obtained or confirmed in advance of drafting a service agreement to ensure that the supplier record and any related reporting is consistent with IRS records.

Step 4:

- x [Speaker Engagement Template](#) and [Instructions](#)
- x [Virtual Speaker Engagement Template](#) and [Instructions](#)

Related Documents/Policies

- x [Contract Approval and Signatory Authority Policy](#)
- x [Payments to Foreign Nationals and Entities Policy](#)

Regulatory Reference/Citations

- x None

Training/Education

Members of the training audience are encouraged to attend training. Managers may make training mandatory for their direct reports. Slides from previous trainings are [online](#).